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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A. M., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A. M.,

Defendant and Appellant.

A125109

(Contra Costa County  
Super. Ct. No. J06-00062)

A.M. challenges the juvenile court's order requiring him to pay a proportionate share of the restitution previously awarded to the victim under joint and several liability of A.M. and his two co-perpetrators. We conclude the juvenile court's order was within its discretion and affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

A.M., together with his co-perpetrators, K.W. and T.M., burglarized the home of a classmate while the classmate and his family were away on vacation. On May 5, 2006, A.M. admitted to first degree residential burglary (Penal Code, § 459<sup>1</sup>) as charged in the delinquency petition filed on January 13, 2006. On June 7, 2006, the juvenile court placed A.M. on deferred entry of judgment (DEJ) on various terms and conditions, including payment of restitution in an amount to be determined.

<sup>1</sup> Further statutory references are to the Penal Code unless otherwise noted.

On May 25, 2007, the court held a contested restitution hearing. At the conclusion of the restitution hearing, the trial court awarded \$36,800 in restitution to the victim. The trial court also ordered that A.M. and his co-perpetrators K.W. and T.M. were jointly and severally liable for payment of restitution to the victim. The court specified that “the restitution claim [is] to be paid before any . . . minor’s case is dismissed.”

In June 2008, K.W.’s father paid the entire restitution amount of \$36,800 to the victim. Subsequently, co-perpetrator T.M. paid his proportionate share of the victim restitution to K.W.’s father. On or about May 19, 2009, the probation officer submitted to the court a DEJ report on A.M., recommending that DEJ be terminated successfully. The report noted that A.M. had “appeared in court several times within the last year attempting to resolve repayment issues to a co-responsible’s father, who paid the victim restitution in full in September 2007. [¶] . . . He has reportedly continued to pay the co-responsible’s father at a rate of \$100 per month.”

A DEJ hearing was held on May 29, 2009. The juvenile court stated it had reviewed “the co-responsibles’ files.” The court noted that restitution was ordered to the victim in the amount of \$36,800, “joint and several liability, and restitution to be paid before the minor’s case to be dismissed.” In determining A.M.’s proportionate share of the restitution amount, the court noted that the entire sum of \$36,800 was paid by K.W.’s father, specifically inquired regarding amounts paid by T.M., and noted that T.M. had subsequently reimbursed one-third of the restitution amount to K.W.’s father. The court stated: “So the amount that [A.M.] owes to [K.W.’s] father is \$12,266.67, one-third of the total [restitution amount],” with credit for any payments already made. A.M.’s counsel objected that the court could not order “restitution [] directly to a non-victim.” The juvenile court overruled counsel’s objection, dismissed A.M.’s case upon successful completion of DEJ, and ordered that A.M. pay to K.W.’s father the sum of \$12,266.67, with interest “as may be provided by law from the date the minute order was originally entered setting restitution” and credit for payments made. A minute order reflecting the court’s oral decision was entered on the date of the hearing. A.M. filed a timely notice of appeal on June 3, 2009.

## DISCUSSION

A.M. contends that the trial court erred by ordering him to pay K.W.'s father a proportionate share of the restitution amount. In developing his argument, A.M. notes correctly that a trial court may order restitution only to a "victim of crime" who suffered an economic loss as a consequence of the crime, citing section 1202.4, subdivision (f) and *People v. Slattery* (2008) 167 Cal.App.4th 1091, 1095 [restitution to hospital where victim was treated was erroneous because the hospital was not a direct victim of the crime]. A.M. also notes that in *People v. Birkett* (1999) 21 Cal.4th 226 (*Birkett*), the California Supreme Court held that an insurer who pays the crime-related losses of its insured under the terms of an insurance policy is not a direct victim of crime, and thus is not entitled to restitution from the offender. (*Birkett, supra*, 21 Cal.4th at p. 244.)

A.M. contends that *Birkett's* holding is dispositive here. A.M. suggests that K.W.'s father stands in relation to the victim in the same way the insurance company in *Birkett* stood in relation to the victim—as a third party with an obligation to reimburse the direct victim of the crime. Further, according to A.M., under *Birkett* an obligation on the part of a third party to reimburse the direct victim of the crime does not render the third party a victim of the crime who is thereby entitled to restitution. On this basis, A.M. concludes that there was "no authority for the juvenile court's order directing [him] to pay restitution to his co-minor's father, a non-victim." We disagree.

A.M.'s contention fails because it rests on the faulty premise that the trial court's order of May 29, 2009, was an award of restitution to K.W.'s father., a non-victim. The only order of restitution in this case, however, was the trial court's order of May 25, 2007, directing A.M. and his two co-perpetrators to pay restitution to the victim in the amount of \$36,800. The restitution order was solely in favor of the victim and not in favor of a non-victim or third party. In order to ensure the victim was made whole, the court properly ordered A.M. and his co-perpetrators jointly and severally liable for restitution to the victim. (See *In re S. S.* (1995) 37 Cal.App.4th 543, 550 [noting that joint and several liability in a restitution order is intended to "serve the salutary purpose of making [the juvenile] understand that he has harmed . . . individual human beings, and

that he has a responsibility to make them whole’ (citation)’].) After K.W.’s father paid the entire amount of restitution and the victim had been made whole, the juvenile court was within its discretion to apportion the restitution payment among the co-perpetrators equally in order to serve the rehabilitative purpose of restitution. (*In re S.S.*, *supra*, 37 Cal.App.4th at p. 549 [stating that “the juvenile court is vested with discretion to apportion restitution in a manner which will effectuate the legislative objectives of making the victim whole and rehabilitating the minor”]; see also *People v. Carbajal* (1995) 10 Cal.4th 1114, 1125, fn. 11, [noting that because a primary purpose of restitution is rehabilitation, trial courts have wide discretion on “how to fashion the amount and manner in which restitution is to be made”].) In this case, the juvenile court’s order of May 29, 2009, furthered the rehabilitative aim of restitution by ensuring that A.M. was responsible for his proportionate share of the restitution to the victim.<sup>2</sup> We find no abuse of discretion on this point.

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<sup>2</sup> In his reply brief, appellant suggests that the trial court’s apportionment of restitution under an order of joint and several liability constitutes a modification of the restitution order without due process of law. In regard to appellant’s due process concerns, we note that A.M. was represented by counsel at a contested restitution hearing and does not dispute that the amount of restitution owed to the victim is \$36,800. (See *In re Brittany L.* (2002) 99 Cal.App.4th 1381, 1390-1391 [minor has the right to a hearing before a judge “to dispute the *determination* of the amount of restitution”].) Moreover, even if we recognized a right to due process (notice and hearing) before apportionment of restitution, we would conclude appellant was not prejudiced by its absence here. In this regard, A.M. does not dispute the fact that he owes his proportionate share (\$12,266.67) of the restitution ordered. Moreover, A.M. has failed to identify, nor can we divine, any legal or factual basis that would serve as an objection to the court’s order that he pay his proportionate share of restitution, pursuant to Welfare and Institutions section 730.6, for the purpose of making the victim whole and to further the rehabilitative aim of restitution. Accordingly, we reject appellant’s contention that his due process rights were violated by the trial court’s apportionment of restitution.

**DISPOSITION**

The juvenile court's order of May 29, 2009, is affirmed.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.